

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6493 of 1998

with

SPECIAL CIVIL APPLICATION NOS. 6596/98, 6597/98 AND 6598/98

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-2 Yes 3 to 5 No

RAJENDRA JAYANTILAL SABUGODA

Versus

STATE OF GUJARAT

Appearance: SCA NO. 6493/98, 6596/98 & 6598/98

M/S THAKKAR ASSOC. for Petitioner

MR. P.G. DESAI, G.P. for the Respondent

S.C.A. NO. 6597/98

MR. Y.N. OZA for the petitioner

MR. P.G. DESAI, G.P. for the respondent.

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 20/08/98

COMMON ORAL JUDGEMENT

The petitioners in all these Special Civil Applications seek a direction to quash and set aside the detention order passed against them under the provision of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act'). It is not in dispute that the order of detention has yet not been served on any of the petitioners. In fact, the challenge is against the threatening action of the respondent to detain the petitioners under the provisions of the Act.

2. The petitioner in Special Civil Application No. 6493 of 1998 Mr. Rajendra Jayantilal Sabugoda, is working as Assistant Manager (Commerce) with the Gujarat State Co-operative Marketing Federation Ltd. (hereinafter referred to as 'the Federation'). The object of the said Federation amongst other includes to arrange for the sale of produce of the member to the best advantage, to purchase and sell agricultural produce and farmers requisites, to act as agents on behalf of member of societies for sale of produce and supply of requisites, such as seeds, fertilizers, equipments and agricultural machinery etc. The say of the petitioner is that requirement of edible oil for the first academic term of the year 1997-98 for mid-day meal scheme and integrative child development scheme for the year 1997-98, the office of the Commissioner, mid-day meal scheme, State of Gujarat and ex-officio Secretary, Education Department, State of Gujarat, requisitioned about 76,000 tins of ground nut oil and about 1,23,000 tins of cotton seed oil. Thus a request was made to the Gujarat State Civil Supplies Corporation Ltd. (hereinafter referred to as 'the Corporation') to procure and make available the said quantity of edible oil. Pursuant to the requisition, the Corporation had invited tenders for sale and supply of about 76,000 tins of groundnut oil and about 1,23,000 tins of refined cotton seed oil from the Co-operative societies engaged in the production of edible oil. As per the tender notice, the Federation had submitted its tender dated 17.7.1997 for sale and supply of 20,000 tins of groundnut oil and 1,23,000 tins of refined cotton seeds oil. It is the say of the petitioner that the Federation has placed an order with one of the public limited Company, namely, Hynoup Food & Oil Industries Ltd. which has the modern processing and filter facilities in the State of Gujarat. This order was to be executed through one of the sister concerns of Hynoup Food and Oil Industries Ltd., in the name and style of Diamond Oil Industries Pvt. Ltd. Hynoup purchased loose oil equivalent to 25,000 oil tins from open market and loose oil equivalent to 15,000 oil

tins supplied by Federation from its Amreli depot. It is further say that the Corporation had not made suitable arrangement for taking sample of the groundnut oil in spite of repeated requests and on account of inaction of the Corporation the Federation suffered a huge loss. Due to insistence of the petitioner the Corporation took samples of edible oil on 13.10.1997 and that the samples were drawn as per the prescribed notes and total five samples were taken from the place where the stock of groundnut oil was stored. It is stated that after the sampling process was over, the tanks were sealed by the Civil Supply Department. Random sampling was done, which confirm the standard. After tinning process labels were fixed on the tins and then loaded in trucks hired by Corporation. Everything was done in presence of the Government officers. After some time some inspections were carried out and it is alleged that groundnut oil did not conform the prescribed standard, which has led to order of detention. According to the petitioner the proposed order of detention against him is illegal, being passed on extraneous and irrelevant ground.

3. In Special Civil Application No. 6596 of 1998 the petitioner, Ashwinbhai Purshottambhai Patel, Director of Hynoup Food & Oil Industries Ltd., a Company in the Oil Industry, which has a modern facilities for processing and filtration of oil. The say of the petitioner is that the Company is supplying groundnut oil under the brand name 'Maruti'. The Federation had requested the Company for execution of the tender for supply of 20000 tins of groundnut oil and 123000 tins of refined cotton seeds oil. The Company in turn made arrangement with its sister concern Diamond Oil Industries Pvt. Ltd. which has a modern filtration plant at its unit at Kadi. Thus, according to the petitioner the contract of the Federation was to be executed through Diamond Oil Industries Pvt. Ltd. The say of the petitioner is that Diamond Oil Industries had to filter the oil and then store the same in tanks. The Corporation did not make suitable arrangement for taking sample of the groundnut oil in spite of repeated requests and on account of which, a huge loss was caused to the Federation. The say of the petitioner is that the proposed order of detention is ex-facie illegal and politically motivated.

4. In Special Civil Application No. 6597 of 1998, the petitioner Dilip C. Patel is working as Quality Controller with Hynoup Food & Oil Industries Ltd. The details of Hynoup Food & Oil Industries Ltd. have been given while referring to the case of the petitioner

Ashwinbhai Purshottambhai Patel in Special Civil Application No. 6596 of 1998. The say of the petitioner is that he is working as Quality Controller with Hynoup Food and Oil Industries Ltd. and he has been working on behalf of the Company and the Company in turn had taken the exercise at the request of the Federation. He is also sought to be detained mala fide for extraneous reasons.

5. In Special Civil Application No. 6598 of 1998 the petitioner Mr. Jayeshbhai Kantilal Guru, is working as Manager with Diamond Oil Industries Ltd. which is a sister concern of Hynoup Food & Oil Industries Ltd. a reference of which has been given in earlier petition. The say of the petitioner is that he is sought to be detained for extraneous reason.

6. Mr. P.G. Desai, learned G.P. appearing for the respondent has raised objection with respect to the maintainability of the present Special Civil Applications on the ground that order of detention has yet not been served on the petitioners and therefore the present Special Civil Applications are not maintainable. He relied on the decision of the apex court in the case of UNION OF INDIA & ORS. VS. PARASMAL RAMPURIA reported in JT 1998(2) SC 531. On the other hand Mr. P.M. Thakker, learned Senior counsel and Mr. Y.N. Oza, learned counsel, appearing for the petitioners submit that the petition is maintainable at the pre-execution stage. They relied on the decision of the apex court in the case of ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA AND OTHERS VS. SMT. ALKA SUBHASH GADIA AND ANOTHER reported in 1992 SCC (Cri.) 301. The learned counsel has invited my attention to para 30 of the judgement wherein the court has carved out certain exceptional circumstances, wherein the court can entertain the petition at pre-execution stage. The court enumerated the following exceptional circumstances.:-

- (i) that the impugned order is not passed under the Act under which it is purported to have been passed,
- (ii) that it is sought to be executed against a wrong person,
- (iii) that it is passed for a wrong purpose
- (iv) that it is passed on vague, extraneous and irrelevant grounds or
- (v) that the authority which passed it had no authority to do so.

7. The learned counsel for the petitioners says that the case of the petitioners falls in category No. (i),

(iii) and (iv). It is submitted that the proposed order of detention is vague, extraneous and on certain irrelevant grounds. The learned counsel placed reliance in the case of KISHOR AMRATLAL PATEL VS. RAJIV TAKRU reported in 1987(1) G.L.H. 543 wherein the court held that the alleged breach of Food Adulteration Act is totally extraneous to the scope of Section 3(1) of the Act, 1980 and does not furnish valid material for detention.

8. In Union of India Vs. Parasmal Rampura (supra) the writ petitioner against whom there was detention order under COFEPOSA Act obtained ad interim stay order, which was subsequently vacated by the learned single Judge. However, the Division Bench granted the interim relief which was ordered to be continued from time to time, and the matter remained part-heard with the Bench for long. While the appeal was pending the Union of India approached to Supreme Court, against the order of Division Bench granting interim relief. The apex court in the opening para has remarked, this:

"In our view, a very unusual order seems to have been passed in a pending appeal by the Division Bench of the High Court."

The court vacated the interim relief granted by the Division Bench, after making observation, thus:

"When the petition was filed, the respondent had not surrendered. Under these circumstances, the proper order which was required to be passed was to call upon the respondent first to surrender pursuant to detention order and then to have all grievances examined on merit after he had an opportunity to study the grounds of detention and make his representation.."

The same course was adopted by learned single Judge of this court, on petition challenging the apprehending detention which was approved by the Division Bench, after considering Alka Subhash Gadia's case (supra). The reference is made to the decision of a Division Bench in ELES NANDUBHAI PATEL VS. C.P. SINGH, COMMISSIONER OF POLICE, AHMEDABAD CITY & ORS. reported in 1997(2) G.L.R. 1062.

9. In order to ensure as to whether there is prima facie case to fall the case of the petitioner in any of the exceptional category laid down in Alka Subhash Gadia's case (supra). I have looked into the English translation of the grounds of detention which has been

placed before me by the learned G.P. It appears that the impugned ground of detention is for violation of clauses 16, 23, 24 and condition numbers 4 and 7 of the Gujarat Essential Commodities (Licensing, Control and Stock Declaration) Order, 1981. The violations appear to be regarding not maintaining the records, putting wrong entries in the stock register, not taking the true purchase in the stock register, selling the groundnut oil without sales bill, purchasing the groundnut oil without purchase bill and showing the entry in the stock register. These violations have been carried out with a view to engage in profiteering and blackmarketing. The petitioner in Special Civil Application No. 6597 of 1998, Dilipbhai Chandulal Patel is also alleged to have indulged in adulteration of groundnut oil and aided and abetted Shri Ashwin Purshottambhai Patel in profiteering and blackmarketing. Similarly, Jayesh Kantilal Guru, the petitioner in Special Civil Application No. 6598 of 1998 is alleged to have violated the provisions referred to above in league with Shri Ashwinbhai P. Patel and Shri Dilipbhai C. Patel and has been a partner in profiteering and blackmarketing. The Company Diamond Oil Industries is none else but purported to be the sister concern of Hynoup Food & Oil Industries. There appears to be material to show that it has no storage, process or production facilities and it is used only to cover up for wrong doings of Hynoup Food & Oil Industries. The actual details of trading between Diamond and Oil Industries and Hynoup Oil and the terms and conditions thereof have not been disclosed or done as per the norms of the trade.

10. The petitioner in Special Civil Application No. 6493 of 1998 Shri Rajendra Jayantilal Sabugola, is the person responsible for supplying part of total quantity of MDM groundnut oil. There are serious allegations of supplying adulterated groundnut oil and thus he has shown larger quantity of groundnut oil supplied than actually supplied.

11. A perusal of grounds of detention clearly indicates that it is not a complaint and simple case of adulteration. There is a racket which is indulged in large scale blackmarketing at the cost of health of primary school children in particular and public at large facing shortage and high price of groundnut oil. In Alka S. Gadia's case (supra) the apex court has cautioned the court exercising powers under Articles 226 and 32 of the Constitution to have self-restrained in exercising of these powers in such matters. The rule is that normally the court should hear the detention matters only after the detenu surrenders to the custody. Having perused the

grounds of detention, it prima facie appears that the case of none of the petitioners fall in any of the exceptional category.

In view of the aforesaid, no interference is called for at this stage and each Special Civil Application is rejected. Any observation made will not have reflection on any proceedings in the matter. Rule discharged. Interim relief vacated.

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